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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-360

DON HOWARD MASTERSON, JR.
1304 Wilson Avenue
Bakersfield, California 93308

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 20, 2005, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from Don Howard Masterson, Jr. (Respondent). On or about April 20, 2005, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 7, 2005.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3732, subdivision (b) of the Code states:

8 "The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

12 7. Section 3750 of the Code states:

13 "The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 " . . .

17 "(d) Conviction of a crime that substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner. The record of conviction or a
19 certified copy thereof shall be conclusive evidence of the conviction.

20 " . . .

21 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
22 substantially related to the qualifications, functions, or duties of a respiratory care
23 practitioner. . . ."

24 8. Section 3752 of the Code states:

25 "A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere made to a charge of any offense which substantially relates to the
27 qualifications, functions, or duties of a respiratory care practitioner is deemed to be a
28 conviction within the meaning of this article. The board shall order the license

1 suspended or revoked, or may decline to issue a license, when the time for appeal
2 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
3 order granting probation is made suspending the imposition of sentence, irrespective
4 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
5 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
6 the verdict of guilty, or dismissing the accusation, information, or indictment.”

7 9. California Code of Regulations, Title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime or
9 act shall be considered to be substantially related to the qualifications, functions or
10 duties of a respiratory care practitioner, if it evidences present or potential unfitness
11 of a licensee to perform the functions authorized by his or her license or in a manner
12 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
13 include but not be limited to those involving the following:

14 “ . . .

15 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

16 “(c) Conviction of a crime involving driving under the influence or reckless
17 driving while under the influence. . . .”

18 COST RECOVERY

19 10. Section 3753.5, subdivision (a) of the Code states:

20 "In any order issued in resolution of a disciplinary proceeding before the
21 board, the board or the administrative law judge may direct any practitioner or
22 applicant found to have committed a violation or violations of law to pay to the
23 board a sum not to exceed the costs of the investigation and prosecution of the case."

24 11. Section 3753.7 of the Code states:

25 "For purposes of the Respiratory Care Practice Act, costs of prosecution
26 shall include attorney general or other prosecuting attorney fees, expert witness fees,
27 and other administrative, filing, and service fees."

28 12. Section 3753.1, subdivision (a) of the Code states:

1 "An administrative disciplinary decision imposing terms of probation may
2 include, among other things, a requirement that the licensee-probationer pay the
3 monetary costs associated with monitoring the probation."

4 FIRST CAUSE FOR DENIAL OF APPLICATION

5 (Conviction of a Crime)

6 13. Respondent's application is subject to denial under Code sections
7 3750, subdivision (d), and 3752, and California Code of Regulations, Title 16, sections
8 1399.370, subdivisions (b) and (c), in conjunction with section 3732, subdivision (b), in that
9 respondent was convicted of crimes substantially related to the qualifications, functions and
10 duties of a respiratory care practitioner. The circumstances are as follows:

11 September 19, 2001 Conviction

12 A. On August 25, 2001, a Bakersfield police officer made an
13 enforcement stop after he observed respondent driving his vehicle without wearing a
14 seatbelt, and that his license plate tags were expired. While speaking to respondent,
15 the officer noticed that he exhibited objective signs of the use of alcohol.
16 Respondent's eyes were bloodshot and watery, his speech was slurred and there was
17 an odor of alcohol on his breath and person. When the officer asked him if he had
18 been drinking, respondent stated he had two beers. He failed to satisfactorily
19 complete the field sobriety tests. The results of his breath test indicated his blood
20 alcohol content was .13% and .12%.

21 B. On September 7, 2001, a complaint was filed against respondent in a
22 criminal proceeding entitled *People v. Don Howard Masterson, Jr.*, in Superior
23 Court, Kern County, Case No. BM609343A. Respondent was charged with
24 violating Vehicle Code sections 23152(a), driving under the influence of alcohol
25 (count 1) and 23152(b), driving with .08% or higher blood alcohol level (count 2).

26 C. On September 19, 2001, respondent was convicted upon his plea of
27 nolo contendere to count 1, driving under the influence of alcohol. He was placed
28 on probation for three years on a number of terms and conditions. The court ordered

1 him to pay fines plus fees in the amount of \$1,258.00, and to serve 2 days in county
2 jail (with credit for 1 day) which was stayed. Respondent was referred to a work
3 release program. Respondent was also ordered to complete a 3 month licensed
4 alcohol education program and participate in a victim impact panel. Count 2 of the
5 complaint was dismissed.

6 October 28, 1997 Conviction

7 D. On September 18, 1997, a complaint was filed in a criminal
8 proceeding entitled *People v. Don Howard Masterson, Jr.*, in Superior Court, Kern
9 County, Case No. BM549152A. Respondent was charged with violating Penal
10 Code section 487(a), grand theft.

11 E. On October 28, 1997, respondent was convicted upon his plea of
12 nolo contendere to grand theft. He was placed on probation for three years. The
13 court ordered him to serve 30 days in county jail, which was stayed. Respondent
14 was referred to a work release program. He was ordered to make restitution for
15 damages as determined by the court.

16 SECOND CAUSE FOR DENIAL OF APPLICATION

17 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

18 14. Respondent's application is subject to denial under sections 3750,
19 subdivision (j), in conjunction with section 3732, subdivision (b), in that he committed a
20 fraudulent, dishonest or corrupt act that is substantially related to the qualifications,
21 functions, or duties of a respiratory care practitioner. Respondent was convicted of grand
22 theft on October 28, 1997. The facts and circumstances, set forth in Paragraph 13,
23 subparagraphs D and E of this Statement of Issues, are incorporated herein by reference.

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27 PRAYER

28 WHEREFORE, Complainant requests that a hearing be held on the matters

1 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

2 1. Denying the application of Don Howard Masterson, Jr. for a
3 Respiratory Care Practitioner License;

4 2. Directing Don Howard Masterson, Jr. to pay the Respiratory Care
5 Board the costs of the investigation and enforcement of this case, and if placed on
6 probation, the costs of probation monitoring;

7 3. Taking such other and further action as deemed necessary and
8 proper.

9 DATED: March 30, 2006

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11 Original signed by Liane Zimmerman for:
12 STEPHANIE NUNEZ
13 Executive Officer
14 Respiratory Care Board of California
15 Department of Consumer Affairs
16 State of California
17 Complainant
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